PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION
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April 13, 2016

Via Email Only to
assemblymember.Dababneh@assembly.ca.gov

Honorable Assembly Member Matthew Dababneh
Chair
Assembly Committee on Banking and Finance
1020 N Street
Suite 360B
Sacramento, California 95814

Re: AB 2610 (Holden; Brown) - OPPOSITION AND CONCERNS

Dear Assembly Member Dababneh:

The Public Investors Arbitration Bar Association (PIABA) is a national association of more than 400 attorneys who represent victims of investment frauds and stockbroker and financial planner misconduct in securities industry arbitration forums and the courts. On a daily basis in our practices, we see devastating losses resulting from violations of investor protection laws and regulations that govern the securities industry and issuers of securities. Disproportionately, those losses fall on elderly and vulnerable savers and investors. We believe that further loosening of longstanding standards for securities offerings would be a predictably damaging mistake.

The current and longstanding rule for the duration of the effectiveness of a securities offering qualification by permit under California's Corporate Securities Law is contained in Corporations Code section 25114, which provides in relevant part as follows:

> Every qualification under this chapter is effective for 12 months from its effective date, unless the commissioner by order or rule specifies a different period . . . .

AB 2610 would *triple* the effective period for small company offerings under Corporations Code section 25113(b)(2) to *three years*. PIABA believes that such a lengthening is undesirable for multiple reasons.

First, the public has a longstanding and reasonable expectation that a permit to offer securities in an issuer transaction is good for one year. Changing that creates the potential for unfair surprise. And changing it by a factor of three for small company offerings – which are among the riskiest of offerings –

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would be all the more surprising and counterintuitive. Why, for example, would a reasonable investor expect riskier securities to be able to be offered three times as long after regulatory review as less risky securities?

Second and more importantly, three years can be a very long time. A lot can change in three years. Consider, for example, the housing boom that was happening in mid-2006. Next, consider that same market in mid-2009. In less than three years, the boom had turned into the worst bust since the Great Depression. Can it really be said that an offering qualified for sale to the public in mid-2006 should have be able to continue being conducted, with the imprimatur of regulatory review that comes with being qualified by permit, during economic times that were as nearly opposite as one could imagine?

The recent economic meltdown is just one example of the radical changes that can impact the viability of investment offerings. Energy costs and the viability of energy-based business models can change dramatically in short, multi-year time periods. And the fortunes of anything technology-based can reverse at great speed. Indeed, the purpose of new technologies often is to render earlier technologies obsolete.

Third, consider what it says about the prospects for a company or project that it takes three years to raise the minimum offering proceeds that are required to break impound and turn the money over to the issuer. If it takes that long, what does that indicate about the attractiveness of the offering and the prospects of the investment? And what does it say about the investment acumen of those who do invest?

Compounding our concerns is that all too often, the people who find themselves in inordinately risky investments are elderly retirees. The reason? They're disproportionately the ones with money. Their homes have had longer to appreciate, their retirement plans have had longer to grow, and they may have received life insurance proceeds from the loss of a spouse. They are particularly vulnerable to promises of higher returns because returns on fixed-income investments such as bonds and certificates of deposit are at historic lows. So they risk their principal to get a few extra dollars of hoped-for return, only to find that they have lost savings they never will have any way to replace.

All of this is compounded by the reality that many seniors are more trusting than they should be, and often are particularly vulnerable to sales people who are friendly and attentive and sound knowledgeable. And sadly, many do not have the energy or alertness they once had. Combine all of these factors and you have a recipe for a nearly limitless number of personal financial disasters. Retirees whose savings would have been sufficient to see them through the rest of their lives suddenly cannot afford to stay in their homes because their Social Security checks, now their sole source of income, simply won't cover all the bills. Worse, they may require other forms of public assistance, including MediCal – or may require it far sooner than would have been the case otherwise.

PIABA believes that money lost by investors in stale offerings is likely never to be recovered. First, there is a collectability issue. By the time savers or investors in a non-viable investment sue, and certainly by the time they obtain a judgment or award, there often is no defendant with funds to pay it. That is all the more likely when changing economic fortunes caused by the passage of time have made the issuer less economically viable than might have been the case when the offering began.

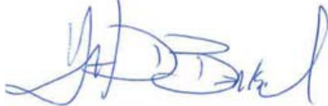
Second, even when the funds might exist, securities litigation is so expensive that it may be impossible or impractical to pursue the matter. Much of this is due to the high cost of expert witnesses in these cases. Thus, for example, a $150,000 loss, which might be devastatingly large to the senior who has suffered it, might well be too small to pursue due to the high cost of securities litigation, especially when combined with the collectability risk. Third, the promoters are very likely to include forced arbitration

clauses, class waivers, choice-of-law clauses, choice-of-forum clauses and other gimmicks in the subscription documents to make pursuing a remedy both unaffordable and all the more unlikely to yield a recovery for the investor.

We as a people have a long history of learning and relearning the harsh lessons of the past. We have been battered mercilessly in the last eight years for forgetting repeated lessons about the dangers financial industry deregulation, including the lessons of the 1920s and 1930s. We must resist continuing efforts at further deregulation of financial and securities markets. We should remember and move back toward the regulatory environment that, for the approximately six decades that ended in the mid-1990s, imbued U.S. capital markets with a level of honesty and transparency that made them the envy of the world. And closer to home, we should maintain for California's savers and investors, and for seniors and retirees in particular, the level of protection that currently exists.

Thank you for your consideration of our concerns about AB 2610.

Sincerely,



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